

Appln No. 09/928,036
Amdt date November 20, 2006
Reply to Office action of May 18, 2006

REMARKS/ARGUMENTS

Claims 1-32 were pending in the application. In the Office action mailed May 18, 2006, claims 27-32 were rejected under 35 USC § 101 as being directed to non-statutory subject matter, claims 1-4, 7-9, 11-14 and 17 were rejected under 35 USC § 102(e) as being anticipated by U.S. Patent No. 6,904,412 ("Broadbent") and claims 5-6, 15-16, and 18-32 were rejected under 35 USC § 103(a) as being unpatentable over Broadbent.

Claims 1, 3, 12, 30, and 32 are now amended. Claims 27-29 and 31 are now canceled. Claim 33 is new.

Claim 1 was rejected under § 102(e) as anticipated by Broadbent.

Claim 1, as amended, specifies "establishing a mortgage broker business relationship pertaining to a loan transaction between a broker and a lender through one or more legal agreements."

Regarding the similar text in prior claim 1, the Office action indicates that Broadbent discloses "Establishing a business relationship pertaining to a loan transaction between a broker and a lender through legal agreements (Column 6, lines 15-32)." Office action, p. 2. The identified portion of Broadbent discloses "a system and method for automatically generating a set of required tasks...including tasks required by applicably federal or state law." Broadbent, col. 6, lines 16-19. The identified portion of Broadbent also discloses "The automated system...uses the Federal, State, local and professional regulations and requirements and implementing instructions to generate the plurality of tasks which can be used to control and drive the process of handling a mortgage loan application to completion and settlement in accordance with these regulations." Broadbent, col. 6, lines 26-32.

Missing from the portions of Broadbent identified by the Office action is any disclosure or suggestion of "establishing a mortgage broker business relationship pertaining to a loan transaction between a broker and a lender through one or more legal agreements" as specified by claim 1.

Moreover, although the Office action states with regard to claim 2 that "Broadbent discloses...executing at least one of a mortgage broker agreement (Column 12 lines 1-22)"

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(Office action, p. 3), it is manifest from the cited portion that Broadbent does not disclose "establishing a mortgage broker business relationship pertaining to a loan transaction between a broker and a lender through one or more legal agreements" as specified by claim 1.

Instead, Broadbent discloses that "mortgage loans will be originated through the System and Program by...,in limited cases, real estate brokers. The individual real estate agents and individual real estate brokers (i.e., brokers that are not corporations or similar business entities) will enter into an employment agreement with OnePipeline, and become part-time W-2 employees of OnePipeline.com. The employment agreements will expressly require the Loan Originator to originate mortgage loans exclusively for OnePipeline.com, and prohibit the Loan Originators from receiving compensation for performing loan origination services for another mortgage lender or mortgage broker." Broadbent, col. 12, lines 2-15. Further, Broadbent specifies that "OnePipeline.com will be acting exclusively in the capacity as mortgage broker." Broadbent, col. 11, lines 21-22 (Although OnePipeline could also fund some loans).

Thus, instead of disclosing or suggesting "a mortgage broker business relationship...between a broker and a lender" as specified by claim 1, Broadbent discloses a part time W2 employer/employee relationship between OnePipeline.com and Loan Originators.

Accordingly, claim 1 is allowable, as are dependent claims 2-11.

Claim 1 also specifies "defining a division of labor through a task list between the broker and the lender to assist in the performance of the legal agreements."

The Office action indicates that Broadbent discloses "Defining a division of labor through a task list between the broker and the lender to assist in the performance of legal agreements" at col. 6, lines 27-45 and 60-67 and col. 15, lines 48-57. Office action, p. 3.

Col. 6, lines 27-45 of Broadbent merely indicates that "The automated system...uses regulations and implementing instructions to generate a plurality of tasks which can be used to control and drive the process of handling a mortgage loan application....Mortgage loan requestors may specify that the system will generate the plurality of required tasks...and monitor the completion of all required tasks....Alternatively, mortgage loans requestors may specify that the automated system will generate the plurality of required tasks...and monitor the completion of all required tasks..." None of this suggests or discloses "defining a division of labor through a task

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list between the broker and the lender to assist in the performance of the legal agreements" as specified by claim 1.

In addition, col. 15, lines 48-57 of Broadbent also does not disclose or suggest "defining a division of labor through a task list between the broker and the lender to assist in the performance of the legal agreements" as specified by claim 1. Instead, Broadbent specifies that the invention of Broadbent may be viewed as "a means for generating the required compliance tasks for a specific loan transaction, provide the tasks to a lender and monitor the completion all required tasks by the lender's service providers." Broadbent, col. 15, lines 53-57.

Accordingly, claim 1 and dependent claims 2-12 are further allowable in view of Broadbent.

Claim 12 specifies "processing the loan application by a lender through a task list that defines a division of labor between the licensed individual and the lender; maintaining the task list to ensure that the licensed individual and the lender have complied with their separate responsibilities."

The Office action points to Broadbent at col. 15, lines 48-57 for disclosing "Processing the loan application by a lender through a task list that defines a division of labor between the licensed individual and the lender." Office action, p. 5. The Office action points to Broadbent at col. 17, lines 26-34 for disclosing "Maintaining the task list to ensure that the broker and the lender have complied with their responsibilities." Office action, p. 5.

Col. 15, lines 48-57 of Broadbent were discussed above with respect to claim 1. As discussed with respect to claim 1, the cited portion of Broadbent merely discloses generating tasks, providing the tasks to a lender, and monitoring completion of required tasks. Similarly, col. 17, lines 26-34 of Broadbent merely indicates that "In a preferred embodiment, the system can supply this required task list in its entirety to the lender..." and "If the user/lender wants OnePipeline to handle the loan, the Compliance Engine can transfer the set of tasks for this loan to an internal Loan Processing & Workflow engine 437." Broadbent, col. 17, lines 25-27 and 34-36.

The portions cited by the Office action simply do not disclose or suggest "processing the loan application by a lender through a task list that defines a division of labor between the

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licensed individual and the lender; maintaining the task list to ensure that the licensed individual and the lender have complied with their separate responsibilities" as specified by claim 12. Accordingly, claim 12 is allowable.

Claim 13 specifies "said server system further configured to: develop and track a task list to implement a division of labor between a broker and a lender..."

The Office action indicates that Broadbent at col. 6, lines 27-67 discloses "Develop and task list to implement a division of labor between a broker and a lender relating to activities resulting in funding a loan for a real property transaction." Office action, p. 6. The cited portion of Broadbent, other than col. 6, lines 46-59, was also cited with respect to claim 1. In view of the discussion above regarding claim 1, Broadbent does not disclose or suggest "said server system further configured to: develop and track a task list to implement a division of labor between a broker and a lender..." as specified by claim 13.

Further, Broadbent at col. 6, lines 46-59 merely indicates that Broadbent "provides the means to control and drive the mortgage transaction to closing by means of a compliance system....The invention was designed to provide mechanisms for use to assure that loan originators meet and exceed federal, state, local, and professional laws governing the relations between real estate sales and mortgage lending activities". This does not, however, disclose or suggest "said server system further configured to: develop and track a task list to implement a division of labor between a broker and a lender..." as specified by claim 13.

Accordingly, claim 13 is allowable, as are dependent claims 14-18 and 33.

Claim 19 specifies "store the loan transaction information into various subsections of the centralized database."

The Office action admits that Broadbent does not disclose this. Office action, p. 10. Nevertheless, the Office action asserts that it would have been obvious "to allow for the storing of information in order to recall the information at a later time." Office action, p. 11.

Even if the supposition of the Office action were true, the Office action ignores the portion of claim 19 stating "into various subsections of the centralized database". Accordingly, the rejection of claim 19 fails to make a prima facie case of obviousness, and should be withdrawn.

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Claim 19 and dependent claims 20-21 are therefore allowable.

Claim 22 specifies "registering a broker with a lender to process a loan transaction." The Office action points to Broadbent at col. 12, lines 20-22 for disclosing such.

The cited portion of Broadbent merely states that "Loan Originators may also have an affiliation with a mortgage lender, which defines the selection of loan products the Loan Originator may offer." That Loan Originators may also have an affiliation with a mortgage lender, or that the affiliation with a mortgage lender may define a selection of loan products, does not disclose or suggest "registering a broker with a lender to process a loan transaction" as specified by claim 22.

Accordingly, claim 22 is allowable, as are dependent claims 23-26.

In addition, claim 22 specifies "providing a list of tasks and targeted completion dates to the broker based on an anticipated closing date of the loan transaction."

The Office action admits that Broadbent does not disclose "Providing a list of tasks and targeted completion dates to the broker based on an anticipated closing date of the loan transaction" and "Tracking the list against the targeted completion dates to complete the task." Office action, p. 12.

Nevertheless, the Office action states that "it was notoriously well known in the art at the time of the invention that mortgage loan transactions are time sensitive with respect to a closing." Office action, p. 12. The assumption made by the Office action is unwarranted, and legally unsupportable. See, e.g., *North Triphammer Development Corp. v. Ithaca Associates*, 704 F. Supp. 422, 429 (1989) ("As a general proposition, time is not of the essence of purchase and sale of realty in the absence of a clear provision making it so. *Spence v. Curry*, 126 A.D.2d 632, 511 N.Y.S. 69 (2d Dep't 1987). Even if the contract designates a specific date on which performance is to occur, time is not of the essence where the contract does not contain a specific declaration to that effect.")

Based on the erroneous assumption of the Office action, the Office action concludes that without a timeframe tracking of progress would be moot as there would be no schedule. In doing so, the Office action merely adds further erroneous assumptions, namely that the only reason to track progress is for comparison with a schedule and that a schedule is required.

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Accordingly, claim 22 is further allowable, as are dependent claims 23-36.

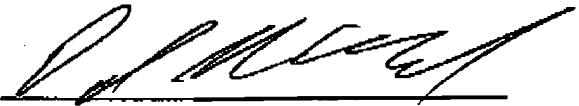
In addition, it is noted that the Office action does explicitly indicate that the Office is taking Official notice when indicating what was "notoriously well known". In addition, applicant notes that discussion of various rejections made in the Office action, particularly of dependent claims, is not necessarily as the claims are otherwise allowable. Nevertheless, "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." MPEP Section 2144.03.A. "As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be 'capable of such instant and unquestionable demonstration as to defy dispute' (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961))." MPEP Section 2144.03.A. Applicant respectfully requests that documentary evidence be provided showing that what was "notoriously well known" if the Examiner persists with rejections relying on what was "notoriously well known."

The application is therefore allowable, and allowance of same is respectfully requested.

Respectfully submitted,

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